

Message Text

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ACTION EB-08

INFO OCT-01 ARA-10 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-10 NSAE-00 FAA-00 L-03 SS-15
NSC-05 /054 W
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FM AMEMBASSY PANAMA
TO SECSTATE WASHDC 8032
INFO PANCANAL
USSOUTHCOM
FAA BALBOA ARTCC

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E.O.11652: N/A
TAGS: EAIR, PN
SUBJECT: DRAFT FAA AGREEMENT

1. THE EMBASSY CONTINUES TO HAVE SOME BASIC CONCERNS ABOUT THE FAA AGREEMENT. WE ARE STILL SOMEWHAT SKEPTICAL THAT THE FIVE-YEAR PHASE-OUT REALLY GIVES PANAMA SUFFICIENT TIME TO TAKE OVER ITS AIR TRAFFIC CONTROL. OUR SECOND AREA OF GENERAL CONCERN HAS TO DO WITH FINANCES: PANAMA'S PUBLIC FINANCES ARE BY NO MEANS IN GOOD SHAPE. THE ADDITIONAL EXPENSES (WHICH WE CALCULATE TO BE SEVERAL MILLION DOLLARS A YEAR) WILL CERTAINLY BE AN UNWELCOME AREA OF NEW PUBLIC EXPENDITURE. WE HOPE THAT THE U.S. GOVERNMENT WILL KEEP THESE CONCERNS IN MIND AS THE NEGOTIATIONS PROCEED.

2. HAVING MADE THESE CAVEATS, WE BELIEVE THAT THE DRAFT AGREEMENT SENT UNDER A-2098 AND A-2438 IS A SOUND BASIS FOR NEGOTIATIONS WITH THE GOVERNMENT OF PANAMA. THE APPROPRIATE MEMBERS OF THE COUNTRY
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TEAM HAVE NOW REVIEWED THIS DRAFT AND THE EMBASSY PRESENTS THE FOLLOWING COMMENTS FOR WASHINGTON'S CONSIDERATION AS A FINAL NEGOTIATING DRAFT IS DRAWN UP:

A. ARTICLE VI (A) (4) STATES, "THE FAA SHALL HAVE RESPONSIBILITY FOR CONTROL OF ACCESS TO ITS OPERATIONAL OR HOUSING AREAS... THIS CONTROL MAY

BE CARRIED OUT BY HIRED GUARD PERSONNEL, OR BY PERSONNEL OF THE NATIONAL GUARD OF THE REPUBLIC OF PANAMA WHERE AGREEMENTS FOR THE PROVISION OF SUCH SERVICES CAN BE REACHED BETWEEN THE FAA AND HIRED GUARD PERSONNEL OR THE NATIONAL GUARD." ARTICLE VI(A) (5) STATES, "THE REPUBLIC OF PANAMA AGREES TO PROVIDE POLICE PROTECTION SERVICES TO FAA PERSONNEL AND THEIR DEPENDENTS AND TO FAA OPERATIONAL AND HOUSING AREAS."

IN PLACE OF PARAGRAPHS 4 AND 5, WE SUGGEST THE FOLLOWING:

"4. THE REPUBLIC OF PANAMA WILL PROVIDE POLICE PROTECTION SERVICES TO FAA OPERATIONAL AND HOUSING AREAS AND TO FAA PERSONNEL AND THEIR DEPENDENTS. THE FAA SHALL HAVE RESPONSIBILITY FOR CONTROL OF ACCESS TO ITS OPEARATIONAL AREAS. TO CONTROL THOSE OPERATIONAL AREAS AND TO AFFORD ADDED PERSONAL SECURITY IN ITS HOUSING AREAS, THE FAA SHALL HAVE THE RIGHT TO HIRE GUARD PERSONNEL. THE DESIGNATED REPRESENTATIVES MAY AGREE ON SUCH REGULATIONS RELATING TO CONTROL OF ACCESS AS ARE CONSISTENT WITH THE PURPOSES OF THIS AGREEMENT."

WE BELIEVE THAT ASKING FOR "CONTROL OF ACCESS" TO FAA HOUSING AREAS WOULD BE COUNTERPRODUCTIVE. LIMITED OFFICIAL USE

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WHEREAS A CASE CAN BE MADE THAT A GOVERNMENTAL/ INDUSTRIAL OPERATION SUCH AS THE FAA'S SHOULD HAVE ITS OWN INDUSTRIAL GUARDS, IT IS DIFFICULT TO MAKE SUCH A CASE FOR HOUSING AREAS. PANAMA HAS BEEN JEALOUS OF THE "JURISDICTIONAL" FUNCTIONS WHICH IT WILL RECOVER UNDER THE TREATIES, AND FOR US TO SEEK TO RETAIN QUASI-POLICE FUNCTIONS IN HOUSING AREAS WOULD PROBABLY RAISE HACKLES. THE CONCEPT OF GUARDS FOR "ADDED PERSONAL SECURITY" HAS A BETTER CHANCE OF ACCEPTANCE. AT THIS POINT, WE SEE LITTLE ADVANTAGE IN MENTIONING THE NATIONAL GUARD AS A POSSIBLE SOURCE FOR THESE GUARDS. TO DO SO MIGHT ONLY EMPHASIZE THE POLICE-LIKE NATURE OF THEIR DUTIES.

B. ARTICLE VI(A)(6) READS: "THE REPUBLIC OF PANAMA AGREES TO PROVIDE WITHOUT CHARGE THOSE SITES THE FAA DEEMS NECESSARY FOR AIR NAVIGATION AIDS OR FOR OTHER AIR TRAFFIC CONTROL AND COMMUNICATIONS EQUIPMENT." IN OUR JUDGMENT, PANAMA WILL CONSIDER THIS LANGUAGE FAR TOO SWEEPING. WE WOULD SUGGEST THAT THE WORD "DEEMS" BE DELETED AND REPLACED BY "AND THE REPUBLIC OF PANAMA DEEM". THE UNILATERAL RIGHT TO EXTEND OUR JURISDICTIONAL AREAS HAS BEEN

A MAJOR IRRITANT IN U.S.-PANAMANIAN RELATIONS.
PANAMA IS NO MORE LIKELY THAN THE U.S. WOULD BE TO
GIVE A FOREIGN COUNTRY THE RIGHT TO UNILATERALLY
ARROGATE TO ITSELF UNLIMITED "SITES" IN ITS
TERRITORY. AGAIN, IT IS PROBABLY BEST NOT TO
INCLUDE THIS IN THE FIRST DRAFT IN ORDER TO AVOID
GETTING THE NEGOTIATIONS OFF ON THE WRONG FOOT.

C. THE LAST SENTENCE OF ARTICLE VII(C) IS UNCLEAR.
IN THE FIRST PLACE, WE ARE NOT CERTAIN WHAT "PUBLIC
SERVICES AND INSTALLATIONS" ARE INVOLVED HERE. IN

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ANY EVENT,THE TERM "ANY CHARGES ... SHALL GIVE
PREFERENCE TO THE FAA" APPEARS NOT TO SAY WHAT WAS
INTENDED. DO WE WANT TO BE CHARGED FIRST? MORE?
LESS?

D. ARTICLE VII(D), LAST LINE,THE WORD "AND"
HAS BEEN DROPPED BETWEEN "OPERATIONAL" AND "HOUSING".

E. ARTICLE X(C), THE "PERSONAL IDENTIFICATION"
MENTIONED IN THE FIRST SENTENCE SHOULD BE SPECIFIED.

F. ARTICLE XI(C) GIVES US SOME PROBLEMS. THE
SECOND SENTENCE MAY BE CONSIDERED BY THE PANAMANIAN
TO BE GRATUITOUS, THOUGH WE SEE NO PARTICULAR PROBLEM
WITH TRYING TO GET IT. HOWEVER, THE LAST SENTENCE,
RAISING THE SPECTER OF SENDING THE MILITARY POLICE

INTO PANAMA TO HELP ENFORCE ORDER IS A VERY BAD
IDEA, IN OUR JUDGMENT. IN THE FIRST PLACE, IT IS
UNLIKELY EVER TO BE OPERATIVE, SINCE SUCH AN ACTION
WOULD REQUIRE THE AGREEMENT OF THE PANAMANIAN GOVERNMENT--
WHICH ALMOST CERTAINLY WOULD NEVER BE FORTHCOMING. IN
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THE SECOND PLACE, THE PANAMANIANIS ARE LIKELY TO BE
ANGERED BY THE APPARENT IMPLICATION THAT THEY WOULD NOT
BE ABLE TO MAINTAIN ORDER AMONG THE CIVILIAN POPULATION
LIVING IN PANAMA WIHTOUT FOREIGN HELP. FINALLY,
WE ARE UNCERTAIN WHETHER THE WAR POWERS ACT WOULD
BE INVOLVED IN ACTION UNDER SUCH A PROVISION.

3. PANCANAL WILL SUBMIT ANY COMMENTS IT MAY HAVE
THROUGH ITS CHANNELS. WE WILL FORWARD SOUTHCOM'S
COMMENTS BY SEPTTEL LATER THIS WEEK. JORDEN

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